IN THE MATTER OF:	)	
	)	
IOWA DEPARTMENT OF CORRECTIONS,	)	
	)	
Employer	)	ADJUDICATOR'S DECISION
	)	
and	)	87-MA-05
	)	
DENNIS ERIKSEN,	)	
	)	
Appellant	)	

Appearances

For the Department of Corrections:

Merrie Murray, Department of Corrections, Personnel
Barbara Olk, Superintendent
Kay Rhoads, Program Director
Jean Sebec, Security Director

For the Appellant:

Dennis Eriksen, Appellant

I. JURISDICTION

Pursuant to IOWA CODE 19A.14 (The Code) a discharged employee may appeal the decision of the appointing agency to the Public Employment Relations Board (the Board) within thirty days of the discharge. Dennis Eriksen was discharged from the Iowa Correctional Institute for Women effective June 12, 1986. The appointing authority denied his appeal on July 3, 1986. Dennis Eriksen filed a timely appeal with the Board on July 9, 1986. The hearing was held in Des Moines, Iowa on August 8, 1986. The hearing was tape recorded. The parties did not file briefs.

II. EXHIBITS

Dept. of Corrections Exhibit #1 - Clarification Letter issued January 22, 1986.

Dept. of Corrections Exhibit #2 - 3 Month Performance Evaluation Plan.

Dept. of Corrections Exhibit #3 - Written Reprimand issued May 1, 1986.

Dept. of Corrections Exhibit #4 - Termination Letter issued June 12, 1986.

Dept. of Corrections Exhibit #5 - Appointing Authority Response to Appeal to Appointing Authority issued July 3, 1986.

Dept. of Corrections Exhibit #6 - Employee Work Rules 102.10 Iowa Correctional Institution For Women.

III. ISSUE

The parties agree that the issue for resolution in this case is the following: Was Dennis Eriksen terminated for just cause; and if not what shall the remedy be?

IV. RELEVANT DEPARTMENT PERSONNEL POLICIES AND PROCEDURES

A. Iowa Correctional Institution for Women Policy and Procedural Manual

Section 102.10

Failure by employees to follow these rules will result in appropriate disciplinary action.

(3) Employees are required to remain fully alert and attentive during duty hours:

a. Employees will not leave their assigned duty post during a work shift without permission;

b. Will avoid activities which interfere with the institution's function of constant care and vigilance;

c. Unusual situations or events should be reported immediately to the next higher authority and action as appropriate should be taken;

d. Will not loaf, loiter, sleep, engage in reading or writing of material unrelated to their duties, or engage in unauthorized personal business or visiting.

B. Discipline and Discharge

Discharge

You may, for just/good cause, be discharged. Discharges may result from continued unsatisfactory work performance or for serious or repeated infractions of rules, regulations or policies.

V. BACKGROUND AND FACTS

Based upon stipulation at hearing and exhibits the parties agree on the following facts:

1. The Appellant, Dennis Eriksen was hired on December 5, 1985 as a nurse in the Medical Department at the Iowa Correctional Institute for Women in Mitchellville, Iowa.

2. Supervisor Kay Rhoads met with the Appellant on January 17, 1986 to discuss an incident reported that the Appellent was observed sleeping while on duty in the Medical Department on January 6, 1986.

3. The Appellant was given a letter of clarification on January 22, 1986 (State Ex. #1) stating that he was observed sleeping on January 6, 1986. The letter stated that the incident was a violation of the work rules and any report of a like incident would result in more severe disciplinary action.

4. Supervisor Kay Rhoads met with the Appellent on April 23, 1986 and verbally went over his three month review of probation status performance evaluation. The performance evaluation rating (State Ex. 2) was 2.40 which is below the competent performance level of 3.0.

5. On April 24, 1986, Duty Officer Brandt wrote a report to Supervisor Kay Rhoads stating that the Appellant was slow to respond to knocks on the door and radio calls by the shift supervisor and the correctional officer on duty in U5.

The report stated that the doors to the Medical Department were locked and the Appellant was not visible. After several attempts, the Appellant responded with an inappropriate radio code and later appeared with disheveled clothes and partially closed eyes.

6. Supervisor Kay Rhoads met with the Appellant on May 1, 1986 and gave him a letter of reprimand (State Ex. #3) detailing the report received by Duty Officer Brandt discussing the April 24, 1986 incident. Kay Rhoads then counseled him that he must be alert on duty and instructed him to leave the top door to the Medical Department open during his shift.

7. On May 31, 1986 the Shift Supervisor in charge of the Medical Department knocked loudly on the door of the Medical Department and called several times attempting to get the Appellant's attention. In her opinion, he was very slow to respond.

8. On June 8, 1986 the Shift Supervisor was making rounds and stopped at the Medical Department. The Appellant was found lying on the examination table with towels folded and placed under his head; his glasses were off and his eyes were closed. After the Supervisor entered the room, she verbally awakened the Appellant who then sat up and discussed the incident with her.

9. The Appellant was given a letter of termination on July 12, 1986 effective that date at the end of the shift.

VI. CONCLUSIONS OF LAW

Section 19A.14(1) of the Code confers jurisdiction upon the Board to hear employee appeals.[1/] The Code designates that the Board's review of disciplinary actions:

1/ Senate File 2175, 71st General Assembly, 1986 Regular Session, as amended by House File 2066. See also, Section 20.1(3) IOWA CODE (1985).

> ...shall be based upon a standard of just cause. If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age or any other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period or the public employment relations board may fashion other appropriate remedies.

Therefore, the issue in this case is whether Dennis Eriksen was terminated from the Department of Corrections for "just cause." The "just cause" standard requires a determination of (1) whether a cause for discipline exists and (2) whether the amount of discipline was proper under the circumstances.[2/]

On June 12, 1986 the Appellant was terminated for sleeping on the job. There is no dispute that on June 8, 1986, Jean Sebec the Shift Supervisor found the Appellant lying on an examination table in the Medical Department with a towel folded under his head, his glasses off and his eyes closed.

The Appellant does not dispute these facts but alleges that he was not sleeping, he was merely lying down with his eyes closed because he did not feel well. He contends that termination in this incident is too severe a punishment and requests reinstatement and back pay.

Although the Appellant alleges that he was not sleeping, I accept the Institution's position that the Appellant was in fact sleeping on the job. To determine absolutely that an employee is sleeping would require an employer to utilize sophisticated equipment or require a number of people present who are willing to testify that the employee was asleep. There is no such requirement of proof necessary within the context of the industrial common law.[3/] The Appellant was discovered lying on a table with a towel for a pillow, his glasses off

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2/ See Elkouri and Elkouri, How Arbitration Works, p. 621 (1973).

3/ General Electric Co. and International Union of Electrical, Radio and Machine Workers, Local 707, 74 LA 116 (King) Arbitrator.

and his eyes closed. He did not respond until the Supervisor verbally awakened him. Based on these facts it is reasonable to assume the individual was sleeping.

Additionally, I find that under the instant circumstances the penalty of discharge was reasonable. Sleeping on the job is a very serious offense. It becomes more serious in this context, when the safety of others is at issue. The Appellant is a nurse in a correctional facility. He is the only medical personnel available during this shift. Had an emergency arose during the time the Appellant was sleeping, the Institution would have been responsible for the consequences. It is unreasonable to force the Institution to assume this risk.

However, before an employee may be disciplined pursuant to a unilateral employer work rule, the rule must be adopted and made known to all employees. In this case the Institution has promulgated work rules mandating that employees "remain fully alert and attentive during duty hours" (Ex. #6). In addition, it explicitly states that violation of the work rules will result in appropriate disciplinary action and serious or repeated violations may result in discharge. I find that these rules are reasonable and related to the efficient and safe operation of the Institution. The Institution demonstrated that the rules have been circulated to all employees. Also, there is no evidence that the rules had been applied in a discriminatory fashion. In this case, the Appellant did not allege he was unaware of the rules, in fact he had been previously counseled about violation of this specific rule.

Furthermore, there are no mitigating circumstances which would warrant special treatment in this case. The facts indicate the act was intentional. Although the Appellant maintains he was ill, that claim would have been given greater consideration if he had told someone he was ill or attempted to contact a supervisor for relief.

As a temporary employee, the Appellant had been reprimanded repeatedly, both verbally and in writing, for sleeping on the job and his unusually slow response to calls from the supervisors. Such warnings are not considered here for the purpose of deciding whether or not the Appellant was asleep, however the Appellant's total work record should be considered when determining whether the discipline imposed fits the offense. The evidence demonstrates the Appellant had a poor work record. His performance evaluation states that he was below competent level performance and had difficulty dealing with constructive criticism. In addition, the supervisor noted that the Appellant did not have sufficient understanding of and appreciation for the rules necessary in an institutional setting. It is clear that corrective discipline had been utilized without avail and there is no reason to believe one more chance would improve the Appellant's performance. Therefore, based upon these factors I find that the Appellant was discharged for just cause and deny the appeal for reinstatement.

DATED at Des Moines, Iowa this 30th day of September, 1986.

Kathryn A. Nowack

KATHRYN A. NOWACK, ADJUDICATOR